



**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

September 13, 2019

The Honorable Joseph Maguire
Acting Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Director Maguire:

No later than September 2, 2019, the House Permanent Select Committee on Intelligence (“Committee”) should have received from you, as required by law, an urgent whistleblower disclosure involving “a serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”¹ More than ten days later, the Committee has not received the disclosure, in violation of the law.

Consistent with his obligations under the Intelligence Community’s whistleblower statute,² the Intelligence Community Inspector General’s (“IC IG”) determined that an August 12, 2019 whistleblower disclosure intended for the congressional intelligence committees from an individual within the Intelligence Community satisfied the statutory definition of an “urgent concern.” Based on a preliminary review conducted within the 14-day period provided by law, the IC IG also determined that there are reasonable grounds to believe that the information relating to the urgent concern is credible.³

On August 26, the IC IG forwarded the disclosure and accompanying materials, along with his credibility determination, to you. Pursuant to the statute, this triggered a 7-day period within which you, in your capacity as Acting Director of National Intelligence (“DNI”), “shall...forward such transmittal to the congressional intelligence committees, together with any

¹ 50 U.S.C. §3033(k)(5)(G).

² 50 U.S.C. §3033(k)(5).

³ Letter from IC IG Michael Atkinson to Chairman Adam B. Schiff and Ranking Member Devin Nunes, September 9, 2019.

comments the Director considers appropriate.”⁴ The Committee should have therefore received this urgent whistleblower disclosure from you no later than September 2, 2019.

Yet, in violation of the statute’s explicit command, and in a stark break with the unbroken practice of previous Directors of National Intelligence, you have refused to transmit to the Committee the whistleblower disclosure, along with the IC IG’s determination that the information in the disclosure represents a credible urgent concern—even after the Committee’s formal request on September 10, 2019. So far as the Committee is aware, this marks the first time a Director of National Intelligence has ever sought to overrule the IC IG and conceal from Congress a whistleblower complaint—in this case, one the IC IG has already determined to be a credible urgent concern.⁵ You have also refused, in further contravention of the statute, to provide the whistleblower with required direction, through the IC IG, on how to contact the Committee directly in a secure manner.

As Acting Director of National Intelligence, you have neither the legal authority nor the discretion to overrule a determination by the IC IG. Moreover, you do not possess the authority to withhold from the Committee a whistleblower disclosure from within the Intelligence Community that is intended for Congress.⁶

Your office has attempted to justify doing so based on a radical distortion of the statute that completely subverts the letter and spirit of the law, as well as arrogates to the Director of National Intelligence authority and discretion he does not possess. Under the statute, the Director serves as a conduit to transmit the complaint to the congressional intelligence committee with any comments the Director considers appropriate and consistent with proper security practices.

Even though the disclosure was made by an individual within the Intelligence Community through lawful channels, you have improperly withheld that disclosure on the basis that, in your view, the complaint concerns conduct by someone outside of the Intelligence Community and because the complaint involves confidential and potentially privileged communications. In a further departure from the statute, your office consulted the Department of Justice about the complaint, even though the statute does not provide you discretion to review, appeal, reverse, or countermand in any way the IC IG’s independent determination, let alone to involve another entity within the Executive Branch in the handling of a whistleblower complaint. Your office, moreover, has refused to affirm or deny that officials or lawyers at the White House have been involved in your decision to withhold the complaint from the Committee. You have also refused to rule out to me that the urgent concern, and underlying conduct, relates to an area of active investigation by the Committee.

⁴ 50 U.S.C. §3033(k)(5)(C). Emphasis added.

⁵ Even if the ICIG had determined that the complaint did *not* amount to an urgent concern, you are required by law to provide direction to the complainant, through the IC IG, as to how to contact the Committee directly in a secure manner. 50 U.S.C. §3033(D).

⁶ 50 U.S.C. §3033(k)(5)(A) requires that “upon receipt of a transmittal from the Inspector general...the Director shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate” (emphasis added).

The Committee can only conclude, based on this remarkable confluence of factors, that the serious misconduct at issue involves the President of the United States and/or other senior White House or Administration officials. This raises grave concerns that your office, together with the Department of Justice and possibly the White House, are engaged in an unlawful effort to protect the President and conceal from the Committee information related to his possible “serious or flagrant” misconduct, abuse of power, or violation of law.⁷

Accordingly, due to the urgency of the matter and the unlawful decision by your office to withhold from the Committee an Intelligence Community individual’s credible “urgent concern” whistleblower disclosure, the Committee hereby issues the attached subpoena compelling you to transmit immediately to the Committee the disclosure, in complete and unaltered form, as well as to produce other related materials.

Absent compliance by **Tuesday, September 17**, the Committee will require you to appear for a public hearing on **Thursday, September 19** to account for the decision to withhold the whistleblower complaint from the Committee—its intended recipient—in violation of the statute. The Committee—and the American people—must know why, in violation of law, a whistleblower complaint is being concealed, whether the underlying conduct involves the President or those around him, and whether the White House is involved in trying to cover up this authorized disclosure.

As explained in more detail in Schedule A of the subpoena, the Committee requires that you produce to the Committee the following information:

- (1) The complete and unaltered whistleblower disclosure, including any annexes, addenda, or accompanying materials, regardless of classification;
- (2) The IC IG’s credibility determination regarding the disclosure, along with any additional accompanying materials submitted by the IC IG to you; and
- (3) Any and all communications, records, memoranda, and documents related to the decision to withhold the disclosure to the Committee, including but not limited to any materials that relate to or involve officials at the White House or the Department of Justice.

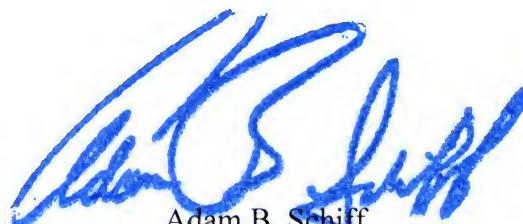
Finally, as we discussed at length on September 12, the Committee expects the whistleblower to be fully protected from any action constituting reprisal, or threat of reprisal. This includes any adverse personnel action for making the disclosure to the IC IG and, if he or she so elects, for contacting the Committee directly, as permitted under the statute. I appreciated your personal assurance that the whistleblower must be protected. Ensuring such protection remains in effect is a priority for the Committee. To that effect, the Committee requires an assurance in writing from your office that no reprisal of any kind, or threat of reprisal, shall be directed at the whistleblower from any official within the Intelligence Community or elsewhere in the federal government, including at the White House, regardless of any contrary interpretation of the statute from any other entity in the Executive Branch.

⁷ 50 U.S.C. §3033(k)(5)(G).

The Committee also deeply appreciates IC IG Michael Atkinson's upstanding and principled handling of this matter, and fully expects that he and all members of his staff will also be protected from any reprisal or threat of reprisal for bringing this matter to the attention of the Committee, as Mr. Atkinson is required to do.

As I underscored in my September 10 letter, the right of Intelligence Community employees and contractors to make protected disclosures to Congress is sacrosanct and enshrined in law. The Committee is under a solemn obligation to ensure that the men and women of the Intelligence Community are protected when they see and report problems, abuses, or unlawful activity. The integrity of the Intelligence Community and the trust and confidence of those who serve our country selflessly is at stake.

Sincerely,



Adam B. Schiff
Chairman

Enclosures

Committee Subpoena and Schedule A

Letter from Chairman Schiff to Acting Director of National Intelligence Maguire,
September 10, 2019